

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

T.P. (Cr1.) No.2/2007

%

Date of Decision : 9th of October, 2007

#

SH. SUKH RAM

.....Petitioner

!

Through : Mr. Dinesh Mathur,
Sr. Adv. with Mr. Ajay
Laroia, Adv.

versus

\$

CBI

.....Respondent

^

Through : Mr. R.M. Tiwari, Adv.

*

CORAM:

HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be
reported in the Digest? Yes

:

B.N.CHATURVEDI, J.

1. Instant petition seeks transfer of case
No.RC4(A)/96ACU-IV under Section 13 (2) read with
Section 13(1) (E) of Prevention of Corruption Act,

1988 from the Court of a particular Special Judge.

2. Stating his advanced age and poor state of health, the petitioner, an accused facing trial, made an application for early disposal of case against him. Such application was however, declined by the learned Special Judge by an order dated 19th September, 2006 noticing that many older cases were pending before him and in the circumstances, no priority could be accorded to the petitioner's case. Aggrieved by such an order of the learned Special Judge, the petitioner approached this Court by way of a Crl. Misc. Case No.6984/2006 which was disposed of vide orders dated 1st November, 2006 and 13th November, 2006 with the following direction :

“The trial court shall make an endeavour for conducting the case as early as possible and for that purpose two hours each for one week in a month may be devoted by the trial court, subject to its convenience.”

3. According to the petitioner, inspite of direction

to the said effect the learned Special Judge failed to expedite the trial. He, therefore, made an application before the learned Sessions Judge, Delhi for transfer of his case to some other court of a Special Judge. His transfer application was however, eventually dismissed by the learned Sessions Judge, Delhi by an order dated 6th March, 2007. It is alleged that the dismissal of his transfer application by the learned Sessions Judge, Delhi made the learned Special Judge more prejudiced which became evident in the course of subsequent hearings of the case. The petitioner recounts certain instances in the petition in support of his plea that the learned Special Judge concerned is acting with a pre-determined and biased mind thereby causing reasonable apprehension that he is not going to have a fair and impartial trial in his Court.

4. Such instances are stated thus :

(i) The petitioner made an application seeking release of certain articles, jewelery items and cash belonging to his individual family members, seized by the CBI. CBI filed a reply to such application conveying it's no objection for release of locker No.174 with Syndicate Bank, R.K. Puram Branch, New Delhi and locker Nos. 501 and 285 with State Cooperative Bank, Shimla. The petitioner alleges that inspite of such no objection from CBI the learned Special Judge concerned instead of allowing his application, directed CBI to file another comprehensive reply in the context of each and every averment in his application. The CBI accordingly filed another reply whereby it conveyed it's no objection for release of some of the items as indicated in para 5 thereof. The petitioner alleges that inspite of such a reply

from CBI the learned Special Judge did not dispose of his application and kept the same pending.

(ii) In his order dated 7th December, 2006 the learned Special Judge makes mention of a telephonic call received by him where the caller introducing himself as Pandit Sukh Ram (the present petitioner) requested to expedite his matter. The order reveals that from the voice of the caller the learned Special Judge was able to distinguish that it was the voice of some very young person while the petitioner happens to be a quite old person. It is alleged that there was no necessity of making mention of this fact in the order sheet as it was totally irrelevant for decision of the case. The petitioner thinks that the mentioning of the said fact in the order sheet reflects the biased

mind of the learned Special Judge who could have been influenced by the unidentified caller to his grave prejudice.

(iii) Referring to the statement of PW 55, a Senior Manager of the Corporation Bank, recorded by the learned Special Judge, it is pointed out that a photocopy of a cheque was wrongly allowed to be marked as Ex. PW 55/B.

(iv) Similarly, it is pointed out, PW 56 Sh. Rishi Prakash, Additional S.P. and PW 60 Sh. B.S. Jhakhari were allowed to make statements with respect to certain facts which were not based on their direct knowledge. Allowing the said witnesses to depose in regard to such facts, inspite of objections being raised on his behalf, pleads the petitioner, speak of biased attitude of the learned Special Judge.

(v) In the course of his statement PW 63 Sh.

H.S. Sandhu, the main investigating officer, was, improperly allowed to place on record photocopy of a document/order dated 17th September, 1996 by taking out the same from police file and the same was marked as Ex. PW 63/C. This document, according to the petitioner, was not relied upon by the prosecution and no copy thereof had been supplied to him with the copy of charge sheet. The petitioner feels that the said paper was admitted on record inspite of being an inadmissible piece of evidence and being hit under Section 162 Cr.P.C. as the learned Special Judge was acting with a prejudiced mind.

(vi) Last instance finding mention in the petition is that on the day of recording of his statement PW 63 Sh. H.S. Sandhu was called by

learned Special Judge in his chamber where he is alleged to have had conferred with him in regard to the case for more than two hours which has raised reasonable apprehension in the mind of petitioner that the learned Special Judge is biased against him.

5. Sh. D.C. Mathur, learned Senior counsel representing the petitioner, contended that the aforesaid instances as set out in the petition clearly demonstrate that the learned Special Judge has been acting with a prejudiced mind ever since this Court passed the orders dated 1st November, 2006 and 13th November, 2006 requiring him to expedite the trial. In addition, he pointed out that though the case before the learned Special Judge was not fixed for hearing on 24th July, 2007 and 2nd August, 2007, which incidentally happened to be the dates fixed before this court for hearing on transfer petition, the

learned Special Judge proceeded to list the case before him for hearing on the said dates simply with a view to put the petitioner to avoidable inconvenience as he could not be expected to be present before this court as also before the learned Special Judge simultaneously. This, argued learned Senior counsel was another instance of the learned Special Judge acting in an unfair and prejudiced manner. Drawing sustenance from a Supreme Court decision in Satish Jaggi Vs. State of Chhattisgarh & Ors.; (2007) ACR 271, the learned Senior counsel contended that not only that justice is done but it is also seen to be done.

6. Appearing for CBI, Sh. R.M. Tiwari, Advocate did not advance any argument in opposition to the petition. He rather stated that CBI has no objection if the transfer petition is granted and the case is transferred as prayed for.

7. In the context of allegations of bias the comments of learned Special Judge concerned were called for. In his comments the learned Special Judge denies all the allegations of bias against him.

8. It is admitted position that the petitioner made an application before the learned Special Judge to expedite his trial in view of his old age and poor state of health and that such application was declined by the learned Special Judge on the ground that he had many other older cases awaiting disposal and was, thus, not in a position to accede to the petitioner's prayer for expeditious trial. On a petition No. Cr1. Misc. Case No.6984/2006 being filed before this court a direction was issued, as extracted earlier, to the learned Trial Court to expedite the trial. The subsequent proceedings held in the course of trial in the wake of the direction by this court for expeditious trial, fell short of petitioner's expectation and he

being aggrieved by the pace of trial, filed a petition before the learned Sessions Judge, Delhi for transfer of his case from the court of learned Special Judge concerned on the plea that inspite of this court's direction for expeditious trial, the learned Trial court had failed to speed up the same. The learned Sessions Judge however, on hearing the transfer petition, dismissed the same vide her order dated 6th March, 2007, noticing that the proceedings held subsequent to the directions dated 1st November, 2006 and 13th November, 2006 of this court showed that such directions were being complied with by the learned Special Judge in letter and spirit and that the transfer of the case from one court to another was unlikely to serve any fruitful purpose rather the same would simply delay the proceedings. It appears that the petitioner was not satisfied with the said order dated 6th March, 2007 of learned Sessions Judge,

Delhi dismissing his transfer petition as he renewed his plea in that regard by approaching this court by way of present petition.

9. Adverting to the specific instances which the petitioner mentions in his petition to justify his prayer for transfer of his case from learned Trial Court, it is noticed that the petitioner had made an application dated 20th November, 2006 before the learned Trial Court for release of jewelery and cash as detailed in Annexure 'A' to the application which was replied to on behalf of CBI on 23rd January, 2007. The learned Special Judge after going through the reply so filed by CBI passed an order dated 23rd January, 2007 requiring it to file another comprehensive reply in respect of each and every averment in the application. It appears that the reply filed by the CBI was found deficient inasmuch as the averment in para 3 of the application were skipped over and the CBI had

altogether omitted to reply to the para in its reply dated 23rd January, 2007. Another reply was later filed on behalf of CBI. In both their replies, the CBI had given no objection to the release of some of the items as mentioned therein. The petitioner's application however, appears to have remained pending for some time and it was only on 18th May, 2007 that an order was passed thereon partly allowing the prayer for release of some of the items for which a no objection was given by the CBI. This was followed by another order dated 11th July, 2007 whereby the application in regard to other items, release whereof was objected to by CBI, was decided and some of the jewellery items were directed to be returned to Ms. Ritu Sharma after segregating the same from other jewellery. No doubt, in view of no objection from CBI for release of certain items, the learned Special Judge could have proceeded to pass

appropriate orders in that respect while keeping the application for release of other items pending awaiting a comprehensive reply, delay in passing such an order on petitioner's application could not necessarily be attributed to any prejudicial disposition of the learned Trial Judge towards the petitioner. The learned Trial Judge eventually passed an order, though somewhat belatedly for release of the items in respect of which there was no objection from the CBI. Further, even some of the other jewelery items, release whereof was contested by CBI, were also later directed to be returned to Ms. Ritu Sharma. Delay simplicitor in disposal of an application is no index of a prejudiced state of mind on the part of a Judge dealing with the same. There appears no sufficient basis in the given case to accept the plea that belated disposal of the petitioner's application was actuated owing to

learned Special Judge concerned suffering from vice of bias against him.

10. The order sheet dated 7th December, 2006 discloses that a call was received by the learned Special Judge on his telephone from some one identifying himself as Pandit Sukh Ram (the present petitioner) to make a request to expedite his matter. The learned Special Judge, it is gathered from his said order, could clearly make out that the person making such call was not the petitioner himself rather someone else. The learned Special Judge in his comments states that he had to make specific mention in the order sheet of such a call being received by him in order to guard himself against any possible allegation in future that he had talked on a number belonging to the petitioner. Of course, mention of such telephonic call could not be relevant for decision of the case, as pleaded on behalf of the

petitioner, in view of what the learned Special Judge had to say on this aspect, there appears no reason on the part of the petitioner to be apprehensive of any bias on the part of learned Special Judge in deciding his case especially when the learned Trial Judge himself has noted that it was not the petitioner who had really made the call.

11. In regard to the allegation regarding a photocopy of a cheque being allowed to be marked as exhibit in the course of statement of PW 55 as also PW 56, Sh. Rishi Prakash and PW 60, Sh. B.S. Jhakhhar being allowed to make statements with respect to certain facts, which were not based on their direct knowledge, the learned Trial Judge has stated that wherever in the course of recording of statement of witnesses any objections were raised on behalf of the petitioner in regard to admissibility of a particular piece of evidence, the same had been

noted down and left open for decision at final stage keeping in view the law laid down by the Supreme Court in Bipin Shanti Lall Panchal Vs. State of Gujrat & Anr.; **AIR 2001 SC 1158**. It is not the grievance of the petitioner that his objections in regard to admissibility of certain pieces of evidence forming part of statements of PW 55, PW 56 Sh. Rishi Prakash, PW 60, Sh. B.S. Jhakar and PW 63, Sh. H.S. Sandhu were not noted by the learned Trial Judge. Simply because such objections are kept open for decision at final stage, in view of decision of the Supreme Court in the above referred case, could be no reason to question the fairness of the learned Trial Judge.

12. A meeting by PW 63, Sh. H.S. Sandhu with the learned Trial Judge in his chamber is another instance set forth by the petitioner to impute bias on his part. The learned Special Judge though in his

comments admits that he had granted a meeting to the said witness in his chamber but this had nothing to do with the petitioner's case. The learned Trial Judge mentions that on Fridays he normally does not fix any court work as it is a mediation day for him and he takes up the cases for mediation in his chamber. 13th April, 2007, which happened to be a Friday, was fixed to record the statement of PW 63 Sh. H.S. Sandhu simply in view of direction of this court to expedite the trial. He denies that he had any conference with PW 63 Sh. H.S. Sandhu, I.O. of the case for two hours in his chamber after recording his statement. He mentions that Sh. H.S. Snadhu PW 63, who was working as S.P. CBI (ACU) (IV) Branch at the time of registration of the case in the year 1996, was, on the date of his statement before the court, posted with the United Nations International War Crimes Tribunal, Hague,

Netherland. After recording of his statement was over and the learned Special Judge had retired to his chamber, on a permission being sought to see him, he allowed PW 63 Sh. H.S. Sandhu alongwith Sh. Gurdial Singh, Special counsel for CBI to come to his chamber. According to him, Sh. H.S. Sandhu, PW 63 was to bring to his notice that the CBI had not paid any expenses for the tickets which he had purchased from his own pocket and that he wanted a certificate from the court for non payment of expenses on that count. In view of what is stated by learned Special Judge, there appears no support to the allegation of the petitioner that it was the learned Special Judge who had called PW 63 Sh. H.S. Sandhu to his chamber to discuss about the case.

13. During the pendency of present petition, which lastly came to be listed on 24th July, 2007 and 2nd August, 2007, it appears that the learned Special

Judge had also fixed these dates for hearing of the petitioner's case before him. Learned Senior counsel argued that the learned Special Judge had fixed the hearing before him on the said two dates simply with a view to cause inconvenience to the petitioner as he could not be expected to be present at the same time before this court as also before the learned Special Judge. It is ironical to notice that on the one hand the petitioner has not been satisfied with the pace of trial, on the other when the learned Trial Judge tries to expedite the trial by fixing additional dates, the petitioner finds fault in that also. Noticeably, personal presence of the petitioner in the course of hearing on his transfer petition before this court was not essential and the learned Senior counsel could have very well addressed his arguments even in petitioner's absence. Moreover, there is nothing on record to show that the learned Special Judge

deliberately fixed the hearing on the said two dates simply to put the petitioner to inconvenience as pleaded.

14. In Satish Jaggi's case (supra), taking note of its certain previous decisions, the Supreme Court, no doubt, observed that in the matter of a transfer petition 'there should not be any scope given to any person to go away with the feeling that the Judge was biased, however, unfounded impression may be', such observations could not be referred to in isolation, keeping apart the facts of that particular case. That was a case where the brother of the Sessions Judge trying the case was a sitting MLA belonging to a particular party of which respondent No.3's father was earlier the leader and the Chief Minister. It was on peculiar facts of that particular case that the Supreme Court allowing the transfer petition directed the High Court to transfer the case to some other

Sessions Court.

15. In Gurcharan Dass Chadha Vs. State of Rajasthan; **AIR 1966 SC 1418** which was one of the cases noticed in Satish Jaggi (supra) it has been held that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. It was ruled that the apprehension must not only be entertained but must appear to the court to be a reasonable apprehension. Clearly, thus, merely entertaining apprehension that justice will not be done to him is not good enough for transfer of a case from one court to another unless such apprehension is a reasonable one and it is for the court dealing with transfer petition to see if there exists a reasonable apprehension of petitioner not getting justice.

16. In the present case it is noticed that even though the petitioner may have had his own reasons

to be apprehensive of not getting justice before the learned Trial Judge, such apprehension for the reasons already stated would appear to be not a reasonable one. Directing transfer of a case from a particular court on the ground of prejudice or bias on the part of the Judge of such court, may amount to serious reflection on judicial conduct of such a Judge and thus fraught with demoralising effect. The transfer of a case, therefore, on such a ground must be visited with utmost circumspection though certainly not at the cost of denial of a fair trial to the person concerned. The case on hand presents a scenario where the petitioner's apprehension of not getting a fair trial before the learned Special Judge concerned, is found to be not a reasonable one.

17. Consequently, the petition must fail and the same is accordingly dismissed.

18. Interim order staying further proceedings

before the learned Trial Judge, pending disposal of transfer petition, stands vacated.

19. A copy of this order be sent to the learned Special Judge concerned, immediately to enable him to proceed with the trial in accordance with law. The petitioner is directed to appear before the Court concerned on 15th October, 2007.

October 09, 2007
sa

(B.N.CHATURVEDI)
JUDGE